

REMARKS

Applicant has carefully reviewed the Final Office Action of September 6, 2005 and offers the following remarks in response thereto.

Before addressing the rejections based on the references, Applicant provides a brief summary of the present invention so that the remarks are considered in the proper context. The present invention is designed to improve presence systems and the resultant routing of incoming communications to the user. Applicant's system distributes creation of the service logic to the presence detection systems. "Service logic" is defined in paragraph 0005 of the specification to be that that instructs an associated presence service to control communications associated with the user based on presence. Thus, the presence detection systems not only detect whether a user is present, but they also generate the service logic. Having generated the service logic, the service logic is then provided to the presence service. The claim language highlights that the service logic is created in the at least one presence detection system, which then provided the service logic to the presence system.

Claims 1-8, 11-22, 25-34, 37, and 38 are rejected under U.S.C. §102(e) as being anticipated by Boyer et al. (hereinafter "Boyer"). For the Patent Office to establish anticipation, the Patent Office must show where each and every element of the claim is shown in the reference. Furthermore, the elements of the reference must be arranged as claimed. MPEP § 2131. Anticipation is a strict requirement, which has not been met in this rejection.

Applicant previously argued that Boyer taught creation of the service logic in the SPFS 201, and that the SPFS was not the same as the presence detection system. That is, in Applicant's system, the presence detection system is the keyboard monitor, mouse tracker, video camera, or the like (see paragraph 0018 of the specification as filed) and would not include the SPFS. In response, the Patent Office states:

The creation and execution of service logic in a system, to control a certain process in that system, is an inherency, native to any client-server system. Any computer process, in which communication flows a certain way, as a result of some criteria, employs the use of service logic to achieve that end. Additionally, even if service logic were not a global trait of computer function, a point the examiner does not concede, the specifically disclosed use of service logic in the SPFS would constitute the use of service logic as a whole, as the SPFS is part of the system.

(Office Action of September 9, 2005, page 6, lines 14-19). Applicant does not dispute that there is service logic in Boyer's system. However, Boyer does not teach that the service logic is created in the presence detection system, as recited in the claims, because Boyer teaches that the service logic is created in the SPFS. Since Boyer teaches that the service logic is created in the SPFS and not in the presence detection system, Boyer cannot anticipate the claims.

If the Patent Office maintains that the SPFS is part of the presence detection system, then Boyer does not teach providing the service logic from the presence detection system to the associated presence service as recited in the claims. The Patent Office opines that the providing element is taught by Boyer at paragraphs 0032 and 0041. Applicant respectfully traverses this assertion. Paragraph 0032 states in full:

[0032] Not shown in this diagram is an optional application that detects user presence activity on the Soft Endpoint. For a personal computer (PC), these are keystrokes and mouse events. Messages are sent from the application to the User Agent 203 when moving from idle to using the keyboard/mouse, or when there has been no activity for a user configurable time period (e.g., approximately 5 minutes). Other events that may be employed to indicate participant presence or not are, for example, logging on or off a system or service, timing out, i.e., no actively [sic] on the system or service for a prescribed interval, telephone on-hook or off-hook indication, a wireless connection or disconnect, or the like.

While this passage discusses various presence detection devices, the optional application that detects user presence activity is not creating the service logic. Likewise, the User Agent 203 is part of the SPFS 201 (see Boyer paragraph 0033 and Figure 2). Thus, this paragraph does not teach providing the service logic from the presence detection system to the presence service as recited in the independent claims.

Likewise, Boyer paragraph 0041 states in full:

[0041] Briefly, the User Agent 203 is a WEB interface to a database that stores information, i.e., presence information, on users that describes where and how the users are present in the network. This information can be used to indicate availability and the best way to contact, i.e., the best mode of communicating with, a user. Access to presence information is restricted based on user preferences that are stored in the User Agent 203. The User Agent 203 uses a LDAP database 206 to store the data, but direct access to the database is not necessary. Servlets in the User Agent 203 are used to request that presence data be created or changed and to request data or subscribe to presence data (a subscription to presence data means that the subscriber is notified when that data changes).

Again, the User Agent 203 is part of the SPFS 201 and the provision of service logic to the User Agent 203 is not the same as providing the service logic to an associated presence service as recited in the claims. Thus, even if the SPFS is part of the presence detection system and the generation of service logic within the SPFS is the same as the recited creating of the service logic in the at least one presence detection system (a point Applicant does not concede, but makes for the sake of rebutting a possible Patent Office interpretation), then Boyer still does not teach or suggest providing the service logic from the presence detection system to the presence service as recited in the claims.

Each of the independent claims 1, 15, and 27 include creating the service logic in the presence detection system and the providing the service logic from the presence detection system to the presence service. Since Boyer does not show at least one of these elements, Boyer cannot anticipate the independent claims.

Since the independent claims are not anticipated, the dependent claims are not anticipated. Applicant requests withdrawal of the § 102 rejection of claims 1-8, 11-22, 25-34, 37, and 38 at this time.

Claims 9, 10, 23, 24, 35, and 36 are rejected under U.S.C. §103(a) as being unpatentable over Boyer in view of McDowell. Applicant respectfully traverses. For the Patent Office to combine references in an obviousness rejection, the Patent Office must do two things. First, the Patent Office must articulate a motivation to combine the references, and second, the Patent Office must support the articulated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). Even if the combination is proper, to establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is taught or suggested in the combination of references. MPEP § 2143.03. If the Patent Office cannot establish obviousness, then claims must be allowed.

Applicant previously argued that there was no evidence in the record to support the motivation to combine the references, as required by the Federal Circuit. The Patent Office responds by stating "[b]ecause Boyer and McDowell seek to solve the same problem, and because the use of GPS would add effectiveness to achieve the goal of Boyer's invention, the combination of the features of the two inventions would have been obvious to one of ordinary skill in the art." (Office Action of September 9, 2005, page 7, lines 5-8). Again, this asserted motivation lacks any evidence in support thereof. Merely because a combination is possible or

the references are in the same field of endeavor does not make a combination obvious. MPEP § 2143.01. The Federal Circuit imposed the actual evidence standard to combat impermissible hindsight reconstruction. The Patent Office's continued failure to provide the required evidence indicates that this combination relies on impermissible hindsight reconstruction. As such, the combination is improper. Since the combination is improper, the rejection is improper. Since the rejection is improper, the claims are non-obvious and allowable. Applicant requests withdrawal of the § 103 rejection on this basis.

Even if the combination is proper, a point which Applicant does not concede, the combination does not establish obviousness because the combination does not teach creating the service logic in the presence detection system and providing the service logic from the presence detection system to the presence service as recited in the claims. That is, as explained above, Boyer does not teach or suggest this element. Nothing in McDowell cures the deficiencies of Boyer. Since the references individually do not teach or suggest the claim element, the combination of references cannot teach or suggest the claim element. Since the combination does not teach or suggest the claim element, the Patent Office has not established obviousness and the claims are allowable. Applicant requests withdrawal of the § 103 rejection on this basis as well.

Applicant respectfully requests reconsideration of the rejections in light of the remarks presented herein. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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